



AN RIALTÓIR CÓGAISÍOCHTA  
THE PHARMACY REGULATOR

# Pharmaceutical Society of Ireland Mediation Guidelines

December 2016

## 1. Introduction

- 1.1 These guidelines have been prepared pursuant to Section 37(1) of the Pharmacy Act, 2007 (“**the Act**”). They are intended to give guidance on the resolution of complaints by mediation pursuant to sections 37 and 40 of the Act.
- 1.2 These guidelines are not binding. They are intended to provide guidance on the resolution of complaints by mediation. They may be revised from time to time.

## 2. Mediation

- 2.1 Mediation is a private, confidential and collaborative process in which a neutral third party – the Mediator – assists the parties to a dispute to find a mutually satisfactory outcome.
- 2.2 The aim of mediation is to identify the disputed issues, develop options, consider alternatives and attempt to reach a mutually acceptable and binding outcome.

## 3. Preliminary Proceedings Committee: referral to mediation

- 3.1 The complaints screening committee, called the Preliminary Proceedings Committee (“**the PPC**”), considers complaints against registered pharmacists (“pharmacists”) and/or registered pharmacies “pharmacy owners”.
- 3.2 When the PPC has considered the information in relation to a complaint, it may advise that:

- (i) There is a case for further action.

Where the PPC advises that there is sufficient cause to warrant further action in relation to a complaint, the PPC may refer the complaint for resolution by mediation,<sup>1</sup> or it may refer the complaint to a Committee of Inquiry as appropriate.

or

- (ii) There is insufficient cause to take further action.

If the Council agrees with the advice of the PPC, the complaints process ends and no further action is taken in relation to the complaint.

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<sup>1</sup> The PPC may refer the complaint to mediation pursuant to section 40 of the Act.

## 4. Determining whether a complaint is suitable for resolution by mediation

4.1 The role of the PSI is to protect patient safety and the public interest. When considering whether a complaint may be resolved by mediation, the PPC must always act in the public interest. It must consider whether the public and patients would be protected if the complaint is resolved through mediation.

4.2 It may not be appropriate to refer a matter to mediation merely on the basis that the complainant and the respondent want the complaint to be referred to mediation.

4.3 The decision to refer a complaint to a mediation process will be considered on a case by case basis having regard to the information which is before the PPC.

4.4 Mediation may be considered appropriate in respect of complaints which do **not** involve allegations of one or more of the following:

- Professional misconduct which the PPC considers to be particularly grave;
- Serious abuse of trust or boundary violations, predatory or manipulative behaviour;
- Particularly serious lapses or persistent lapses in professional competence;
- Serious criminal acts, dishonesty or fraud; or
- Serious concerns in relation to the health of a pharmacist, including addiction.

## 5. Parties to mediation

5.1 The parties to any mediation are as follows:

- The complainant; and
- The pharmacist or pharmacy owner.

## 6. Consent

6.1 Where the PPC decides to refer a matter to mediation, it must write to each of the parties to seek their consent to the process.

6.2 The PPC will:

- Request each party to confirm that they consent to the mediation process in writing;

- Advise the pharmacist or pharmacy owner that consent given for the purposes of mediation shall not be taken as an admission in respect of any allegation made by the complainant;
- Advise the parties of the proposed timeframe within which mediation must be concluded; and
- Enclose a copy of these guidelines to assist the parties in making their decision.

6.3 In addition each party will be required to undertake in writing that they will:

- Attend the mediation and participate in good faith;
- File sufficient documents or other material with the Mediator to enable mediation to be conducted effectively;
- Accept and will abide by these guidelines; and
- Accept the timeframe within which the mediation process must be concluded.

6.4 Once the consent of all parties has been secured, the complaint will be referred directly for resolution by mediation.

6.5 If all parties do not consent to the mediation, the complaint must be referred to a Committee of Inquiry.

6.6 If the complainant or the pharmacist or pharmacy owner withdraws their consent prior to mediation having commenced it shall be treated as though no consent had been given for the purposes of the Act.<sup>2</sup> This means that the complaint must be referred to a Committee of Inquiry. The other parties must be notified in relation to this.

## **7. Arrangements between the parties**

7.1 The Legal Affairs Unit of the PSI will liaise between the relevant parties and make all necessary administrative arrangements. All correspondence between the parties will be circulated by the Legal Affairs Unit. This will involve agreeing, amongst other matters, a time, date and venue for the mediation process.

## **8. Representation**

8.1 The parties shall be entitled to be represented by a legal representative or to be accompanied by an advocate, friend or family member or union representative.

8.2 Should any of the parties wish to have any other party in attendance, the consent of the Mediator shall be sought in advance of the mediation.

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<sup>2</sup> Section 37(3) of the Act.

- A party who elects to retain legal representation will provide the Mediator with the name and contact details of any such representative(s) in advance.
- It will be assumed that any legal representative so notified to the Mediator will have authority to negotiate and settle terms of resolution on behalf of his or her client.
- If one or both of the parties wish to be accompanied by another individual, e.g. family member, friend or union representative, then they shall notify the Mediator in advance.

## 9. Cost of mediation process

9.1 The PSI will bear the costs of the mediation process including the Mediator's reasonable fees, venue costs, etc.

9.2 The PSI shall not be responsible for any legal or other costs incurred by the complainant<sup>3</sup> or the respondent.

9.3 The Mediator's fee shall be agreed upon prior to mediation.

9.4 The expenses of witnesses shall be paid by the party producing such witnesses and the cost of any proofs or expert advice produced at the direct request of the Mediator shall be borne equally by the parties unless they agree otherwise.

# The Mediation Process

## 10. The Role of the Mediator

10.1 The Mediator is a neutral party who assists the parties to resolve the complaint. The Mediator will assist the parties to communicate with one another.

10.2 The Mediator will not provide the parties with legal advice.

10.3 The Mediator may advise on procedural issues associated with any proposed resolution of a complaint.

10.4 The role of the Mediator is to be impartial and to help the parties identify their needs, clarify issues, explore solutions and negotiate their own terms of resolution.

10.5 The Mediator shall have no power to impose any particular outcome on the parties.

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<sup>3</sup> This applies where the Registrar is not the complainant.

10.6 The Mediator will use his or her skills to present, reframe and promote settlement possibilities. The Mediator may propose recommendations for resolution of the complaint and each party will be encouraged to put forward their own recommendations.

## 11. Appointment of the Mediator

11.1 The PSI will maintain a panel of qualified and accredited Mediators. A Mediator will be appointed from this panel.

11.2 All parties must agree to the appointment of the Mediator.

11.3 It will be presumed that there is no conflict to prevent a Mediator from being appointed. If the Mediator or any of the parties are aware of a conflict of interest,<sup>4</sup> it must be disclosed to the PSI and an alternative Mediator will be appointed, if necessary.

## 12. Documentation for mediation

12.1 The parties will be instructed to file all documents and materials directly with the Mediator. The parties must file sufficient documents to enable mediation to be conducted effectively and such other material as may reasonably be requested by the Mediator.

12.2 A template mediation agreement<sup>5</sup> shall be provided to the parties and the Mediator in advance of the mediation process commencing. The form and content of the agreement shall be decided by the Council at its discretion. The parties shall be required to use the agreement provided.

12.3 The Mediator will be furnished with copies of all documentation considered by the PPC in relation to the complaint, in addition to the following<sup>6</sup>:

- Template Mediation Agreement;
- The Pharmacy Act 2007;
- Code of Conduct for Pharmacists (relevant edition);
- Pharmacy Practice Guidance Folder;
- Such other documents as the Council or PPC may specify;
- Such other documents as the Mediator may request the parties to submit;

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<sup>4</sup> This includes a perceived conflict of interest.

<sup>5</sup> A copy of the template mediation agreement is available at Appendix 1.

<sup>6</sup> A description of some of these documents is included in paragraph 19 of this document

- Expert evidence relating to the complaint (if any);
- A copy of these guidelines; and
- Any other relevant documents or materials.

### **13. Confidentiality**

- 13.1 The entire process will be conducted confidentially save that Section 37(5) of the Act requires the Mediator to report on the terms of resolution of a complaint to the Council. In the event that the resolution involves the imposition of a disciplinary sanction on the pharmacist or pharmacy owner, that sanction (other than admonishment or censure) cannot take effect without a Court order. Furthermore, under Section 57 of the Act the Council shall, if satisfied that it is in the public interest to do so, give public notice of the imposition of a disciplinary sanction.
- 13.2 No answer or statement made in the course of mediation may be communicated to any person other than those participating in the mediation. No answer or statement made in the course of mediation may be used in any disciplinary, civil or criminal proceedings.<sup>7</sup>
- 13.3 There shall be no formal record of the mediation process save in relation to the terms of resolution agreed between the parties at its conclusion. Confidential information disclosed to a Mediator by the parties or by witnesses in the course of the mediation shall not be divulged by the Mediator. All records, reports, or other documents received by a Mediator while serving in that capacity shall be confidential.
- 13.4 The parties shall maintain the confidentiality of the mediation and shall not rely upon, nor introduce as evidence in any arbitral, judicial, or other proceedings a) views expressed or suggestions made by another party with respect to a possible resolution of the complaint, b) admissions made by another party in the course of the mediation proceedings, c) proposals made or views expressed by the Mediator, or d) the fact that another party had or had not indicated willingness to accept a proposal for settlement made by the Mediator.

### **14. Duration of mediation**

- 14.1 Except for unusually complex cases, the timeframe within which the mediation process must be concluded will be one day. The parties must be informed of this time limit and confirm that they agree to the time limit in advance of the mediation.
- 14.2 If mediation cannot be held within the timeframe outlined at 14.1 above, the Mediator and the parties may agree to an extension of one further day.

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<sup>7</sup> Section 37(7) of the Act.

14.3 If an extension of a further day is agreed between the parties as per 14.2 above and it transpires that the mediation cannot be concluded within that further day, the Mediator may apply to the PPC for an extension of the timeframe. Where this extension is granted by the PPC the Mediator shall notify the parties of the extension of the timeframe. If the PPC does not agree to an extension of the timeframe, the Mediator shall consider the mediation to be one that cannot resolve the complaint.

## Mediation Outcomes

### 15. Terms of Resolution/Agreement

15.1 The parties to the mediation process may reach a mutually acceptable agreement during the process.

15.2 The terms of resolution which are reached between the parties may include the imposition of a disciplinary sanction on the pharmacist or pharmacy owner, such as:

- (a) An admonishment or censure;
- (b) The attachment of conditions; and/or
- (c) The suspension or cancellation of registration.

15.3 Where the resolution of a complaint involves the imposition of a disciplinary sanction (other than admonishment or censure) on the pharmacist or pharmacy owner, that sanction cannot take effect without a court order.

15.4 The terms of resolution may also include other means of resolving the complaint which are mutually acceptable to all parties.

15.5 Terms of resolution, if agreed, will be recorded and signed by all parties and the Mediator.

15.6 The Mediator will seek to ensure that the terms are both viable and sustainable. The objective will be to ensure that the terms satisfy the parties, deal with all the issues, are workable and practical and minimise the possibility of future dispute.

15.7 The Mediator shall record the terms of resolution in an appropriate format;

- (a) The terms of resolution will be reviewed and signed by all parties;
- (b) The parties, by signing the terms, shall confirm that no further action will be taken by them in relation to the matters referred for mediation; and



(c) The Mediator shall report the terms of the resolution to the Council<sup>8</sup>.

15.8 A breach by a pharmacist or pharmacy owner of the terms of resolution agreed between the parties may form the basis of a new complaint against that person.

## **16. Prohibition on payment of financial compensation**

16.1 The terms of resolution agreed between the parties shall not include the payment by any party of any compensation or inducements, financial or otherwise.

## **17. Termination of mediation**

17.1 Mediation shall be terminated by:

- The execution of terms of resolution by the parties and the provision of a report from the Mediator to the Council in accordance with the requirements of Section 37(5) of the Act.
- The Mediator notifying the PPC and the relevant parties of his/her opinion that the complaint cannot be resolved within the prescribed timeframe or can only be resolved after taking into account considerations which make the complaint more suitable for a Committee of Inquiry;
- By a written declaration of one or more parties to the effect that that they are withdrawing from the process.

## **18. Failure to resolve the complaint by mediation**

18.1 If terms of resolution cannot be agreed, then the following steps will be taken:

- The Mediator shall give written notice to the relevant parties that he/she has formed the opinion that the matters under consideration cannot be resolved within the prescribed timeframe or can only be resolved after taking into account considerations which make the complaint more suitable for a Committee of Inquiry;
- The Mediator shall inform the PPC pursuant to Section 40(2) and provide reasons for his/her opinion; and
- The PPC shall refer the matter to a Committee of Inquiry.<sup>9</sup>

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<sup>8</sup> Section 37(5) of the Act.

<sup>9</sup> As if under Section 40(1)(b) of the Act.

## 19. Some words explained

### **Admonish**

To reprimand firmly.

### **Censure**

To criticise strongly.

### **Code of Conduct for Pharmacists**

This is a document which sets out the principles and ethical standards against which pharmacists are expected to act.

### **Committee of Inquiry**

The Professional Conduct Committee (see below) and the Health Committee (see below) are both Committees of Inquiry.

### **Conditions**

The PSI Council can impose a sanction where conditions are attached to a pharmacist's registration, including restrictions on how they can practice as a pharmacist.

### **Expert Evidence**

Expert evidence is the opinion of an expert witness (e.g. independent pharmacist) on given facts within the specialty in which they are qualified or have experience working in.

### **Health Committee**

The Committee of Inquiry which deals with complaints about the impairment of a pharmacist's ability to practise because of a physical or mental ailment, emotional disturbance or addiction to alcohol or drugs.

### **Inquiry**

A hearing similar to a hearing before a court or tribunal.

### **Mediator**

A Mediator is a person who assists parties to reach a voluntary agreement to resolve their dispute. The Mediator is an independent third party.

### **Mediation**

Mediation is a private, confidential and collaborative process in which a neutral third party – the Mediator – assists the parties to a dispute to find a mutually satisfactory outcome.

### **Mediation agreement**

This agreement comes at the beginning of the process. It is a document which sets out the agreed process to be followed and is signed by both parties.

### **Pharmacy Practice Guidance Folder**

This is a collection of documents issued by the PSI which provides guidance to pharmacists and pharmacy owners in relation to the practice of pharmacy and the provision of pharmacy services.

### **Professional Conduct Committee**

The Committee of Inquiry which deals with complaints about professional misconduct or poor professional performance.

### **Professional Misconduct**

Behaviour that goes against the code of conduct for registered pharmacists or that involves fraud, dishonesty or other unacceptable behaviour. (Professional misconduct is defined in full in the Pharmacy Act 2007. The Act is available online on the PSI website or [www.irishstatutebook.ie](http://www.irishstatutebook.ie). The full definition is in Complaints, Inquiries and Discipline on page 29 of the Act.)

### **The Pharmacy Act 2007**

The Pharmacy Act 2007 regulates the operation of pharmacists and pharmacies, including the management of complaints and the Fitness to Practise process.

# APPENDIX ONE

## APPENDIX 1

### Sections 37 and 40 of the Pharmacy Act 2007

Mediation of  
complaints.

37.—(1) The Council may devise guidelines about resolving complaints by mediation.

(2) The guidelines may include provision about—

- (a) determining, having regard to the public interest, whether a complaint might be satisfactorily resolved by mediation or warrants the holding of an inquiry,
- (b) the persons who may mediate (“mediators”),
- (c) the recording of the manner in which the complaint is resolved and of the agreement of the complainant and the registered pharmacist or pharmacy owner to the resolution,
- (d) the steps to be taken (including notice to the complainant, the registered pharmacist or pharmacy owner and the preliminary proceedings committee) if the complaint cannot, in the opinion of the mediator, be resolved by mediation,
- (e) any other matters that the Council considers necessary or appropriate for facilitating the resolution of a complaint by mediation.

(3) No attempt may be made to resolve a complaint by mediation without the consent of the complainant and the registered pharmacist or pharmacy owner.

(4) Consent given for the purposes of *subsection (3)* by a registered pharmacist or pharmacy owner shall not be taken as an admission of any allegation made by the complainant.

(5) The mediator shall report the terms of resolution of a complaint by mediation to the Council.

(6) Where the terms of resolution of a complaint consist of or include an outcome corresponding to one or more of the disciplinary sanctions set out in *subsection (1)(b) of section 48*, the Council may impose that or those sanctions as if under that section.

(7) No answer or statement made by the complainant or by the registered pharmacist or pharmacy owner in the course of mediation may be—

- (a) communicated to any person other than those participating in the mediation, or

(b) used in any disciplinary, civil or criminal proceedings.

(8) The Council may revise any guidelines devised under this section.

(9) In this section, “mediation” includes other informal means of resolving complaints.

Procedure following recommendation for, or decision to take, further action.

40.—(1) If the preliminary proceedings committee advises, pursuant to *section 38*, that there is sufficient cause to warrant further action or the Council decides, under *section 39*, to take further action, the committee shall either—

(a) refer the complaint for resolution by mediation under *section 37*, or

(b) refer the complaint to whichever of the following committees (“committees of inquiry”) it considers appropriate—

(i) the professional conduct committee,

(ii) the health committee.

(2) If informed by a mediator that a complaint referred for resolution by mediation—

(a) cannot be so resolved,

(b) can be so resolved but only after taking into account considerations which make the complaint more suitable for a committee of inquiry,

the committee shall refer the complaint to a committee of inquiry as if under *subsection (1)(b)*.

# APPENDIX TWO





## Conduct of the Mediation

4. The Mediator has been provided with the following documents:
  - All documentation considered by the PPC and the Council of the PSI in relation to the complaint;
  - The Pharmacy Act, 2007;
  - Code of Conduct for Pharmacists;
  - Pharmacy Practice Guidance Folder;
  - The PSI Mediation Guidelines;
  - Such other documentation as the parties may have agreed that the Mediator would be provided with in advance of the mediation.
5. The Parties shall be entitled to bring a representative or friend with them to the mediation. Should either of the parties wish to be accompanied by any other person, including an expert, the consent of the Mediator shall be sought in advance. The names of the representatives of the Parties who will attend at the mediation, if any, will be notified to the Mediator prior to the mediation. If the Parties themselves are not present, they will ensure that any representatives at the mediation shall have full authority to resolve the Complaint.
6. The Mediator shall inform the Parties of the time limit fixed by the PPC for the resolution of the Complaint. In the event that the mediation cannot be held within that time frame for good reason or that the mediation is commenced and not concluded within that time frame, the Mediator may apply to the PPC for an extension of that time frame and shall communicate to the Parties the extension of the time frame granted, if any. In the event that the PPC does not agree to extend the time frame, the Mediator shall consider the mediation to be one which cannot resolve the Complaint.
7. The Parties agree that the Mediator will have the right to determine the procedure at the mediation including the right to terminate any meeting or discussion, limit the time for which any representative may present its position or otherwise direct the course of the mediation with a view to ensuring its efficient, fair and orderly conduct. The Parties acknowledge that no formal record of the mediation will be kept by the Mediator.
8. The mediation will take place on ..... at                      Dublin starting at     am.
9. The mediation shall continue during the time allotted and shall determine upon the happening of any of the following events:
  - (a) The Parties reach agreement to resolve the Complaint and such agreement is recorded in writing and signed by both Parties;
  - (b) One of the Parties withdraws from the mediation;
  - (c) The Mediator decides to discontinue the mediation;
  - (d) The Mediator decides that the Complaint is more suitable for a Committee of Inquiry;
  - (e) The Mediator decides for any reason that he ought not to continue as Mediator.
10. If no written agreement is signed by the Parties to resolve the Complaint, all the Parties' rights shall be reserved and shall remain in all respects unaffected by the mediation save to the extent provided in this Agreement. The Parties agree that in such circumstances all documents and written summaries of case furnished to them by the other Party shall be forthwith returned to that Party, and that no copies shall be kept by them. All documents and written summaries of case furnished by the Parties to the Mediator shall, in such circumstances, be shredded and disposed of by the Mediator.

11. The Parties acknowledge that the entering into this agreement shall not prevent the Complainant from commencing or continuing any litigation in relation to the Complaint.

### **Confidential Information**

12. Subject to Section 37 (5) of the Act, which requires the Mediator to report the terms of resolution of a complaint by mediation to the Council, and insofar as relevant Section 50 and Section 57, the Parties, their representatives, all persons attending at the mediation and the Mediator shall keep confidential and shall not reveal save as required by law and insofar as may be necessary to bring into effect or enforce any settlement agreement entered into:

- i. any written summaries of the Parties' cases;
- ii. all documents exchanged by the Parties;
- iii. any statements whether oral or written made in the course of the mediation;
- iv. any concessions or admissions of law or fact;

provided that the foregoing shall not prohibit the discovery, inspection or production of documents, which would, had the mediation not taken place, be subject to discovery, inspection or production.

### **Mediator's Role**

13. The Mediator will be neutral and impartial. The Mediator will assist the Parties to isolate the issues, develop and explore options for resolution of the issues between them and, if possible, achieve an effective resolution of the Complaint by agreement between them. The Mediator will not make decisions for a Party or impose a solution on the Parties.

14. The Parties agree that they cannot see, inspect or in any way make use of the Mediator's notes or any document prepared by him for the purposes of or in the course of the mediation.

15. The Parties agree that the Mediator may not be called as a witness in any legal or similar proceedings or in any form of alternative dispute resolution in relation to the Complaint or any matter related to or concerning the subject matter of the mediation.

16. The Parties agree that the Mediator cannot act as counsel, consultant, advisor or expert for any of the Parties in relation to the Complaint nor in any other capacity in relation to the Complaint unless all the Parties agree in writing that he may so act.

17. The Parties agree that they cannot rely upon any expression of opinion, advice or comment made by the Mediator in the course of the mediation in or for the purposes of any legal or similar proceedings or any form of alternative dispute resolution in relation to the Complaint or any matter related to or concerning the subject matter of the mediation.

### **Costs**

18. The costs of the mediation shall be discharged by the PSI.

19. The Parties agree that they shall each bear their own costs and expenses of participating in the

mediation. The Parties further agree that the Mediator has no power to award costs to or against any Party.

**Exclusion of Liability**

20. The Parties agree that the Mediator shall not be liable to the Parties in contract, tort (including negligence and/or breach of statutory duty) or otherwise howsoever except for fraud or fraudulent misrepresentation.

21. This Agreement shall be governed by and construed in accordance with Irish law and the Parties agree to submit to the exclusive jurisdiction of the Courts of Ireland as regards any claim or matter arising under or in relation to this Agreement.

Dated this        day of        , 201\_\_.

**To be signed by the parties. At the mediation all other persons present at the mediation (this to include an assistant to the mediator if any) will sign to confirm their undertaking to keep the process confidential in accordance with paragraph 12 hereof in consideration of their being allowed to attend at the mediation.**

**Signed:**        .....        .....

**Signed:**        .....        .....

**Signed:**        .....

**- Mediator**